IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.162 OF 2004

1. Shri Nivruti Ganuji Gaikwad since deceased through his legal heir Shri Sopan Nivruti Gaikwad. .. Petitioner

Versus

1. Shri Ashok Laxman Kharade & ors. .. .. .. Respondents

Mr.P.J.Pawar for petitioner.

Mr.Arjunwadkar for respondent No.1.

CORAM : H.L. GOKHALE, J.

DATED : 27th June 2006

ORAL JUDGMENT : (Per H.L.Gokhale, J.)

1. Heard Mr.Pawar in support of this petition. Mr.Arjunwadkar appears for respondent No.1, who is the original defendant in the suit and is having a Power of Attorney of the other respondents.

2. The petitioner has filed a suit for permanent injunction being Regular Civil Suit No.284 of 1996 in the Court of the Civil Judge, Junior Division, Daund, District Pune. He has sought an injunction only against the 1st defendant, who is respondent No.1 herein. As far as the other respondents herein are concerned, he has no grievance against them and has, therefore,

not joined them as the defendants in the suit. These other respondents applied to the trial Court and on their application, the learned Judge has allowed them to be joined as additional defendants. It is this order passed by the trial Court which is under challenge in the present petition.

3. This petition came up earlier before another single Judge (Dr.Chandrachud, J.) on 14th January 2004 when a notice was directed to be issued to all the respondents informing them that the matter will be heard finally at the admission stage. The respondents are served and are represented by Mr.Arjunwadkar. Mr.Arjunwadkar states that these additional respondents have an interest in the property viz. land bearing Gut No.506 (old Survey No.43/1) admeasuring about 1 H .34 R. (hereinafter referred to as "the suit property"). Even if that be so, if the plaintiff does not want any relief against them, the plaintiff will suffer at his own choice by seeking a relief only against the original defendant. It is for him to decide against whom he should file a suit. Order I Rule 3 of the Code of Civil Procedure, 1908 cannot be used to direct the plaintiff that he should join these other persons

who claim to have an interest in the suit property. In fact, the petitioner (original plaintiff) has purchased the suit property from these other respondents who are sought to be added. He does not want any relief against them. His relief is restricted only against respondent No.1. That being so, this is an aspect which ought to have been looked into by the learned Judge. Obviously, he has committed a material error of law while exercising the jurisdiction. The order is, therefore, required to be interfered in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

4. In the circumstances, this petition is allowed and the order dated 22nd January 2003 passed by the Civil Judge, Junior Division, Daund, which is impugned in the present petition, is set aside. The trial of the suit has been stayed in view of the pendency of this petition. In view of the order passed today, the added respondents will stand deleted and the suit will proceed thereafter.

5. Petition is allowed in the aforesaid terms without any order as to costs.

(H.L. GOKHALE, J.)